

**DOCKET NUMBER 32-6**

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**ALAN STANLY**

**UNITED STATES BANKRUPTCY COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

In Re:	)	<b>Case No. 05-05926-PBINV</b>
	)	
	)	<b>Involuntary Chapter 7</b>
FRANCIS J. LOPEZ, an individual,	)	
	)	<b>EVIDENTIARY OBJECTIONS TO</b>
Alleged Debtor.	)	<b>DECLARATION OF FRANCIS J. LOPEZ</b>
	)	<b>IN SUPPORT OF MOTION BY ALLEGED</b>
	)	<b>DEBTOR FOR AN ORDER BIFURCATING</b>
	)	<b>TRIAL RE INVOLUNTARY PETITION;</b>
	)	<b>SETTING DEADLINE TO ADD NEW</b>
	)	<b>PETITION CREDITORS; AND</b>
	)	<b>REQUIRING THE POSTING OF A BOND</b>
	)	
	)	<b>Date:</b> December 19, 2005
	)	<b>Time:</b> 10:30 a.m.
	)	<b>Judge:</b> Hon. Peter W. Bowie
	)	<b>Dept.:</b> Four (4)

**TO: HONORABLE PETER W. BOWIE, UNITED STATES BANKRUPTCY**  
**JUDGE:**

Petitioning creditor Alan Stanly ("Stanly") respectfully submits the following evidentiary objections and hereby moves to strike portions of the Declaration of Francis J. Lopez in Support of Motion by Alleged Debtor for an Order Bifurcating Trial Re Involuntary Petition; Setting Deadline to Add New Petitioning Creditors; and Requiring the Posting of a Bond (the "Lopez Declaration"):

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1                   **REQUEST FOR RULING ON OBJECTIONS AND MOTION TO STRIKE**

2                   Stanly respectfully requests that this Court issue rulings on the following evidentiary  
3 objections and motion to strike prior to ruling on the merits of the Motion by Alleged Debtor for  
4 an Order Bifurcating Trial Re Involuntary Petition; Setting Deadline to Add New Petitioning  
5 Creditors; and Requiring the Posting of a Bond (the “Motion”).

6                   **EVIDENTIARY OBJECTIONS**

7                   **OBJECTION NO. 1.**

8                   **Testimony:**   Page 9, paragraph 5, lines 1 through 4 of the Lopez Declaration which state as  
9 follows:

10                               My 22 creditors are not contingent, or subject of a bona fide dispute  
11                               (except Mr. Stanly whose judgment is being appealed). None of the  
12                               22 are employees or insiders. None of these creditors received a  
13                               payment which was outside of the ordinary course of business.

14                   Debtor objects to and moves to strike the above testimony in its entirety based on the  
15 following grounds:

16                   **Objection No. 1.1: Improper Legal Conclusion**

17                   Lopez’ testimony, particularly his claim that “None of these creditors received a payment  
18 which was outside of the ordinary course of business,” consists of legal conclusions, and Lopez  
19 has not presented any evidence to demonstrate that he is qualified to make such conclusions.<sup>1</sup> The  
20 “ordinary course” standard of 11 U.S.C. section 547(c)(2) is highly technical and Lopez’ casual  
21 use of the term should not be permitted to encompass such a complex legal conclusion.

22                   Further, Lopez has not offered any basis to support the legal conclusions that his alleged  
23 creditors’ claims are “not contingent,” not “subject to a bona fide dispute,” and that the alleged  
24 creditors are not “employees” or “insiders” as those terms are used in 11 U.S.C. section 303(b).  
25 Even if Lopez is not testifying as an expert with regard to these particular assertions, he has

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<sup>1</sup> Federal Rule of Evidence (“FRE”) 702; See Objection No.1.2, below.

presented no evidence to demonstrate the appropriate foundation for the legal conclusions asserted in his statements.<sup>2</sup> Therefore, these statements are improper and inadmissible.

**Objection No. 1.2: Improper Expert Opinion**

Lopez has not been offered as an expert in this case and no evidence has been presented concerning whether he has any knowledge, skill, experience, training, or education concerning the practice of law to allow him to testify as a legal expert, as required by FRE 702:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, *a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify* thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case. (Emphasis added.)

Because Lopez has not qualified as an expert legal witness, he may not testify concerning legal conclusions and the above testimony should be stricken.

**Objection No. 1.3: Improper Lay Opinion**

No evidence has been presented to qualify Lopez as legal expert and his opinions concerning complex legal conclusions are not reasonably based on his perception to qualify as admissible lay opinion, as required by FRE 701:

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.<sup>3</sup>

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<sup>2</sup> FRE Rule 701; See Objection No.1.3, below.

<sup>3</sup> FRE 701.

1 As discussed above, Lopez' statements concern complex legal issues which require "scientific,  
2 technical, or other specialized knowledge." Lopez' statements do not qualify as lay opinion and  
3 must be stricken.

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5 Dated: December 5, 2005

**ROBBINS & KEEHN**  
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8 By: //s// Sarah H. Lanham  
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10 Charles F. Robbins  
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12 Attorneys for Petitioning Creditor Alan Stanly  
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